The Solicitors' Journal

VOL. LXXX. **Saturday, September 12, 1936.** No. 37

Current Topics.

Central Criminal Court: September Session.

Among cases set down for hearing at the September session of the Central Criminal Court which opened on Tuesday is that arising out of the incident after the King's review on 16th July in which the accused is charged with "unlawfully possessing a firearm and ammunition, with intent to endanger life; presenting near the person of the King a pistol with intent to break the peace; unlawfully and wilfully producing near the person of the King the said pistol with intent to alarm His Majesty." The list, which is a heavy one and showed at the beginning of the week 130 persons for trial or sentence, includes four murder charges, three of attempted murder, two of manslaughter, two of causing grievous bodily harm, eight of wounding, and two of assault while armed. There were also two charges of arson, four of forgery, one of causing a public mischief, twelve of bigamy, three of demanding money with menaces, three of coining, one of perjury, one of rape, four of fraudulent conversion, nine of breaking and entering, two of conspiracy to defraud, one of defamatory libel, nine of stealing, two offences against the Post Office, and one offence against the Bankruptcy Acts. Greaves-Lord, J., is dealing with the cases in the High Court judges' list.

The "Hibbert Bequest."

The late Mr. William Nembhard Hibbert, LL.D., Barrister-at-law, who died in June last, has by his will bequeathed his law library in his chambers at Garden Court, Temple, to King's College, University of London, the gift to be known as the "Hibbert Bequest." Dr. Hibbert was a prolific writer and editor of law books, one of the most successful "coaches" and for some years a Lecturer and Dean of the Faculty of Law at King's College, whose interests he has borne in mind by the bequest just mentioned, and which will doubtless be a welcome addition to the College library and useful to the many students attending the law classes. While it is true, as Counsellor Pleydell, in Scott's "Guy Mannering," said long ago, that "a lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect," it is equally true that the lawyer, in order to be thoroughly equipped for his professional avocations, cannot afford to neglect the study of works specifically devoted to the elucidation of legal principles, to the reports embodying the decisions of the courts, and to the statutes which in ever-increasing number are poured out year by year by our Legislature. Law libraries, like others, therefore need to be reinforced again and again, so that bequests like that of Dr. Hibbert's are to be encouraged.

The Housing Problem.

Several interesting observations were made, some criticism being directed against the standard of overcrowding set up by the Housing Act, 1935, at the recent Sanitary Inspectors' Association Conference at Harrogate. Mr. George Binns, Chief Sanitary Inspector, Liverpool, welcomed the Act as the first real attempt to deal with the vast evil of overcrowding, which he attributed largely to the inadequate supply of houses at rents which the working classes could afford to pay. The Act sowed the seed for public ownership of all working-class property, but it was a serious blemish upon it that it still permitted every room in a house, except a scullery or bathroom, to be counted for sleeping purposes. The provision for the first time of a national minimum standard of housing accommodation was, the speaker intimated, a great step forward, but the standard was definitely low. Moreover, it was thought that at the present rate of housing progress, it would be a long time before they were in a position in cities and towns to offer suitable alternative accommodation to every occupant of overcrowded houses. Readers need hardly be reminded that the provision of "suitable alternative accommodation" (defined in s. 12 of the Act of 1935) is an important factor in securing improvement in housing conditions; the absence of such being, for example, a good defence to what otherwise might amount to certain offences in relation to overcrowding within s. 3 of the Housing Act, 1935. "Will the next step," Mr. Binns continued (for this and other information regarding the speeches we are indebted to *The Times*) "be a control of all working-class property by the local authorities?" They would do well, he urged, to proceed steadily with slum clearance and, so far as was possible under present conditions, augment their building programme so that by steady work overcrowding might also be relieved.

The Overcrowding Standard.

Mr. George Laws, of Richmond, Surrey, criticised the standard of overcrowding set up by the Housing Act, 1935. The results of the survey following on the low standard adopted meant, he said, that for many years to come hundreds of thousands of families, unless they chose to live and sleep in kitchen-living rooms, must tolerate lack of privacy and deficiency in their family arrangements. Much too narrow a view had been taken of the living and sleeping arrangements and the needs of the working-class large family. Provided there was sex separation and the permitted number of persons per house was not exceeded, the family was at liberty to sleep how and where they liked, and might possibly overcrowd bedrooms in so doing. The ideal standard which should be enforced was, he urged, the bedroom standard only. It is but fair to recall Sir Kingsley Wood's statement in the

House of Commons about two months ago, when the House went into committee of supply on a vote of some £15,000,000 for the salaries and expenses of the Ministry of Health. The Minister said that he looked upon the present statutory standard of overcrowding as a beginning. It represented the minimum amount of accommodation capable of early enforcement. He hoped and believed that it would be improved as progress was made in the present housing efforts. It should not be forgotten that in the meantime overcrowded families who were re-housed by the local authorities would be re-housed on the basis of the standard laid down in s. 37 of the 1930 Act as concerning the re-housing operations of local authorities. That section provides that a house containing two bedrooms shall be treated as providing accommodation for four persons, one of three bedrooms as providing accommodation for five persons, and one of four bedrooms as providing accommodation for seven persons. Moreover, the Minister is not, except in special circumstances, which may also justify deviation from the standard just mentioned, to approve the provisions of any dwelling which (*a*) being a two-storied house has less than 620 or more than 950 superficial feet, or (*b*) being a structurally separate and self-contained flat or one-storied house, has less than 550 or more than 850 superficial feet (see Housing Act, 1923, s. 1 (2) (*a*) and (*b*)).

Tenement Buildings.

Points from two other speeches at the Sanitary Inspectors' Association Conference may be briefly noted. Alderman J. Kinley, of the Bootle Public Health Committee, condemned tenement buildings. These, he thought, were no solution for the overcrowding evil. The method of re-housing in new tenement areas meant transplanting those people with a slum environment, a slum outlook, morality, and culture into a slum colony, and condemning them to that type of life for another sixty years at least. Mr. E. Thomas Swinson (London County Council) thought that the general interior planning and arrangement of some modern flats merited stringent criticism, as they differed little from the universally condemned "back to back" houses. The point which he selected for specific condemnation was their lack of adequate means of through ventilation. In the main, he said, bad planning was due to financial reasons—the crowding of a large number of individual dwellings on a site so as to produce the biggest possible financial result.

The Cost of Sewers.

A few weeks ago we alluded to the prospect of new legislation in connection with the frontagers' contributions to the cost of sewers. A Joint Committee has been considering this question in relation to the provisions of ss. 62 and 64 of the Romford Urban District Council Act, 1931, and, in a recent report on Public Sewers (Contributions by Frontagers), has made a number of recommendations in regard to the provisions of all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of laying a sewer in a highway repairable by the inhabitants at large. These may be shortly summarised as follows: The basis of apportionment should be the extent of the frontage. The cost should not exceed the average cost per lineal yard in the district of providing sewers in private streets under the Private Streets Works Act, 1892, and any excess should be borne by the general rates. No part of the cost should be recovered from those whose premises abut upon the highway at the date of the resolution to construct a sewer unless and until a new building abutting on the highway is erected on such premises, and then only to an extent proportional to the extent of the frontage of the new building, while interest should not be charged on the cost until it becomes so recoverable. Only a substantial alteration in the size or character of a building should be regarded as equivalent to the erection of a new building. Frontagers whose existing buildings abut upon the highway at the date above specified should be permitted to connect their buildings with the sewer without thereby rendering exigible the share of the cost apportioned on their premises. Non-completion of the sewer within two years after the date of the resolution should cause the resolution and all liabilities consequent thereon to lapse. All existing agreements between the local authority and landowners should be safeguarded. It is recognised that special provision may have to be made for cases where the frontage is so small as to be quite out of proportion to the area which the sewer will serve.

Recovery of Contributions.

The Committee further recommends that in all future Bills in which power is sought by a local authority to recover contributions from frontagers towards the cost of a sewer which has been laid down in land over which a street (whether repairable by the inhabitants at large or not) is subsequently constructed that (*a*) there should be no set-off in respect of enhancement of value in assessing the compensation payable at the time of the original construction of the sewer to the owner of the land traversed by it, and (*b*) if and when a street is constructed over the sewer a contribution towards the cost of the sewer should be recoverable from the owners of the land or premises fronting on the street, such contribution to be calculated and exigible in the same manner and subject to the same conditions, with the necessary adaptations, as have been recommended with regard to contributions. The Committee, which has not thought it to be its duty to frame draft clauses on the lines of the foregoing recommendations, recognises that it may be necessary in the process of actual drafting to adopt different phrasing and to introduce provisions with the object of rendering a scheme more complete. The principles indicated in the recommendations are, however, it is intimated, those upon which future legislation should proceed. The report is published by H.M. Stationery Office, price 3s. 6d. net. To this readers desiring further particulars on this important subject are referred.

Traffic Lights: A Point of Evidence.

An interesting point concerning evidence to be produced where a person is charged with not conforming with traffic lights was raised in a recent case at the Kingston Borough Police Court. According to the defendant's evidence, as he approached the crossing where the alleged offence took place the traffic lights were showing green. They changed to amber when he reached the "stop" line, and, in accordance with the Highway Code, he continued his journey. A motor-cyclist with whom he was involved in a collision said that the lights showed green as he approached them. On the clerk asking for evidence as to whether the green light was showing in one direction while red was showing in another, the solicitor who appeared for the police said that they worked by machinery, and suggested that they were working correctly. "That may be so," was the rejoinder, "but you have not got that evidence to-day." The police, it was intimated, were asking the magistrates to rely on a delicate piece of machinery which they had not proved was working correctly. In reply to the question whether it could be taken as the definite opinion of the court that traffic light cases could not be proved except on the production of such evidence, the clerk said that it seemed an elementary rule of evidence, and, when it was urged further that many courts during the past five years had convicted on evidence such as had been produced in this case, he replied: "Because other courts are wrong, there is no reason why we should be." Summonses for driving dangerously and for not conforming with the traffic lights were dismissed, but the defendant was fined 40s. on a summons alleging that he drove without due care and was ordered to pay £4 13s. costs. The matter was reported in *The Times* of 3rd September.

The New Rules. R.S.C. No. 3, 1936.

(*Continued from p. 695.*)

SHIP'S PAPERS.—II.

A New Flexible Procedure.

7. *After the Order.*

If the plaintiff swore, by affidavit, that he had made all reasonable efforts to obtain a document, but had not succeeded, the court would usually be satisfied (Cmd. 5066, p. 19, s. 50).

But the insurers might point to a document which the plaintiff had overlooked or a person to whom he might apply for further documents. They were then entitled, *as of right*, to a further affidavit, and the plaintiff might have been put to more expense, more delay, and a wide geographical investigation. It sometimes took twelve months between writ and the date when the underwriters could be compelled to deliver a defence. Many of the documents might then be found to be irrelevant.

8. *Advantages and Disadvantages.*

To abolish the order entirely would be wrong (the Committee felt), for the underwriter generally has no documents, beyond a record of the insurance, and no knowledge of previous transactions or of those who were previously concerned in the subject matter. The assured can easily obtain the documents, which are in the possession of his own agents. On the other hand, although irrelevant documents may, in fact, be produced from other persons, it may be difficult to know in advance, until they are inspected, which documents may really become material (pp. 20, 21).

Moreover, "underwriters are particularly liable to have dishonest claims made against them," and a "strict scrutiny" of documents is often the "best means of combating" such claims (p. 21, s. 57). Further, full discovery may often disclose a defence, e.g., that "the damage occurred before or after the insured transit."

> "The problem therefore is to guard against abuse of the order while preserving its use" (p. 21, s. 58).

On the other hand, "stringent discovery" is sometimes "superfluous," e.g., where the facts are admitted and the real question is one of law or construction or where the dispute is found to depend upon oral evidence.

9. *Recommendations of the Committee.*

The recommendation is characteristic. While abolishing the rigidity of the order, its merits are retained.

The order should no longer be made "as of course or of right" and "no longer automatically hold up for an indefinite time the progress of the action." It is to be no longer mandatory, but in the court's discretion (p. 21, s. 60).

They suggest a future procedure in this type of action (p. 22, s. 61):—

(i) Fourteen days after writ, statement or points of claim.

(ii) Defendant then to apply for discovery.

(iii) Master to make the usual order for discovery, this to extend to "all persons interested."

(iv) If defendant not satisfied with results, defendant to apply for order for ship's papers in full form.

(v) Order to be entirely in the discretion of the judge. Before order made, underwriters to disclose defence.

(vi) Where fraud alleged, judge will probably order ship's papers as of course, and at the outset.

(vii) Defendant to have twenty-one days to deliver defence after plaintiff's affidavit, unless material documents have not been produced.

> "In this way there will be substituted for a rigid rule which may work great injustice, the discretion of the judge, who may be trusted to hold the balance fairly between the respective needs of the plaintiff and defendant" (p. 22, s. 63).

10. *The New Rule: Order XXXI, Rule 12a.*

The whole purpose of the new rule—in force since 13th July—will now become manifest. It leaves the procedure at large and does not stereotype or fix beforehand any rigid method. No doubt, however, the recommendations of the committee will have weight in evolving a new technique of discovery in an action upon a marine insurance policy.

Order XXXI relates to "Discovery and Inspection," and r. 12 deals with the normal application for discovery of the documents which are, or have been, in the power of the other party, "relating to any matter in question thereon."

Then follows the new rule:—

> "12A. Where in any action arising upon a Marine Insurance Policy an application for discovery of documents is made by the insurer, the following provisions shall apply:—"

Pausing here, it may be observed that the new rule leaves undisturbed the current of authority which grouped together the cases upon marine insurance exclusively, and those upon an insurance where the transit is partly by sea and partly by land. The test is: does the action "arise upon" a marine insurance policy?

Four "provisions" follow.

(i) *Order for Discovery.*

> "(*a*) On the hearing of the application, the court or judge may, subject as is provided in the next paragraph, make an order in accordance with Rule 12 or Rule 14 of this Order."

Rule 12 prescribes an order for *discovery* on oath; rule 14 relates to an order for *production* on oath of such documents as the court thinks "right." The order is discretionary, but will probably be made in the first instance.

(ii) *Order for Ship's Papers.*

> "(*b*) Where in any case the court or judge is satisfied, either on the original application or on a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order for the production of ship's papers, the court or judge may make such order in the Form No. 19 in Appendix K."

An order for ship's papers, accordingly, has now ceased, by this rule, to be "matter of right" and becomes entirely a matter of discretion. It can be granted, however, in *any* case to which the rule applies, either at the outset, or later. The test is: is it "necessary" or "expedient" "having regard to the circumstances of the case?" All these terms are terms of art, but, nevertheless, they enable the master or judge—and indeed, obligate him—to consider the case as a whole and to exercise his discretion judicially. Although it is said that the judge *may* make such an order, yet, no doubt, if a reasonable consideration of the case pointed to its necessity or expediency, it would become his *duty* to make it. The form to be used is the form in current use, although, perhaps, the wording of the rule—the discretion in the word "may"—leaves it open to the master or the judge to introduce modifications in the Form, as the Committee suggested.

(iii) *A Stay, discretionary.*

> "(*c*) In making an order under this rule the court or judge may impose such terms and conditions as to staying proceedings or otherwise as the court or judge in its or his absolute discretion shall think fit."

Hitherto, the proceedings were stayed, as of course, until the order was complied with. Now, a stay is to be in the discretion of the court, and at least to this extent, Form No. 19, can, in express terms, be modified. Moreover, any other "terms and conditions" may be imposed—here, again in modification of Form No. 19. The term "absolute discretion" probably does not mean any more than "discretion," for every discretion must be judicially exercised and can be reversed if it has been exercised upon wrong principles.

(iv) *No lists of documents.*

> "(*d*) Rule 13A of this order shall not apply to any application made under this Rule."

Rule 13A gives the court power to order, in lieu of an affidavit, lists of documents. This procedure does not suit an action upon a marine insurance policy where it is necessary to have a list of the documents on oath.

Rights grow out of remedies; and, with a little knowledge of the former procedure for ship's papers, now happily abolished, the apparently colourless and "common-form" wording of the new rule becomes instinct with life and meaning. The strictures of Greer, L.J., in *Leon* v. *Casey* led to the reference of the matter to the Business of the Courts Committee: their recommendations in January produced this new rule, six months later. And thus, a practice in force for a century and a half having become an injustice and an anomaly, has been reformed unostentatiously, to the greater expedition and the logical simplification of the law.

This precedent might well be followed by the Rule Committee of the Supreme Court in order to remedy other anomalies in procedure to which learned judges from time to time, gravely draw attention.

Company Law and Practice.

THE best way of beginning our discussion of the topic which this week is to occupy these columns is to discover what the Act of 1929 has to say on the matter; and there we go to s. 116. That section is in the following terms:—

The representation of Corporations at the Meetings of a Company.

"(1) A corporation, whether a company within the meaning of this Act or not, may—

"(*a*) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

"(*b*) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

"(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company."

"A company within the meaning of this Act," which is mentioned in s. 116 (1) (*a*) and (*b*), is, by virtue of s. 380 (1), a company formed and registered under the 1929 Act or an "existing company"; while this latter expression of "existing company" means a company formed and registered under the Joint Stock Companies Acts (i.e., the Joint Stock Companies Acts, 1856 and 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability (21 & 22 Vict. c. 91)), the 1862 Act, or the 1908 Act, but a company registered under any of those enactments in Northern Ireland or the Irish Free State is not included in this expression "existing company": s. 380 (1). Section 116 (1) (*b*) speaks of a corporation which is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of the Act; and before we pass on we should remember the expression "debenture" here includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not: s. 380 (1).

The forerunner of s. 116 was s. 68 of the 1908 Act, and a comparison of its phraseology with that of the present section shows quite clearly the greater ambit of operation which is possessed by the present section. It (s. 68) read thus: "A company which is a member of another company may by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company." The extent of the operation of s. 68 of the 1908 Act fell to be considered by Eve, J., in *Blair Open Hearth Furnace Company Ltd.* v. *Reigart* (1913), 108 L.T. 665. I will not go into the facts, or into the case itself, in any detail, and it is, I think, sufficient to say that one of the defendants' principal contentions was in effect that the word "company" in the section should receive a very wide construction, and should be held to include *all* corporations, including foreign ones. Section 285 of the 1908 Act defined a company as meaning, unless the context otherwise required, a company formed and registered under that Act or an existing company; and he came to the conclusion that s. 68 contained nothing which required a meaning to be put on the word "company" other than the meaning assigned to it by s. 285 of the same Act; foreign corporations were, therefore, excluded.

In the case of *Colonial Gold Reef Ltd.* v. *Free State Rand Ltd.* [1914] 1 Ch. 382, there was a motion against the defendant company and certain directors to restrain them from excluding three persons from acting as directors, and the principal question was whether, at a general meeting of the company, those three persons were duly elected directors. The case is interesting from our point of view, for the purposes of to-day's discussion, as the question arose for consideration of the right to vote as a company's representative and upon what that right is dependent. I do not think this point can be shown up more simply than by quoting from the judgment of Sargant, J., at p. 387 *et seq.*, where he uses these words: "With regard to the vote offered by Mr. C. W. . . . as representative of an English company under s. 68 of the Companies (Consolidation) Act, 1908 . . . it appears that a resolution had been passed by the English company on behalf of which he tendered the vote pursuant to s. 68 . . . It is true that all that was produced at the meeting was a copy of that resolution, but *the right to vote does not depend upon the evidence offered; it depends upon whether a valid resolution has in fact been passed.* No objection has been taken on the ground that no such resolution was in fact passed, and in my opinion the objection to the admission of this vote . . . fails." The second portion of the words in this extract which I have italicised are clear enough to be beyond question; but the first portion is unfortunately not so unambiguous. If the right to vote does not depend upon the evidence offered—a proposition which, as we now see, has the backing of authority—then why should any evidence be demanded, if it is not going to help, in law, to prove the legality of the right to vote, and why should the representative accede to the demand? The point is, perhaps, not worth our further consideration, as we have other things to do; but, I raise it for the benefit of those of my readers who may care to ponder further over the question. The learned editors of "Buckley" comment on the decision by saying: "*Quaere*, whether any such evidence can be required," and indeed, it certainly seems that a refusal by a representative to supply any such evidence stands on fairly firm ground, on the strength of this decision, at any rate. Section 116, be it noted, also requires the authorisation of a resolution.

To turn to another aspect of the position which is occupied by the representative of a company duly appointed under s. 116, it is provided by s. 115 (1) (*d*) that in the case of a

private company two members, and in the case of any other company three members, personally present, shall be a quorum; and authority is not lacking for the proposition that a representative appointed pursuant to s. 116 is "a member personally present" for the purpose of being included in and helping to constitute a quorum. This authority is *In re Kelantan Coconut Estates Limited and Reduced* [1920] W.N. 274, where there was a petition for reduction of capital, the only question on which was whether the special resolution to reduce the company's capital had been duly passed. One of the company's articles provided that "two members personally present shall be a quorum." There were present at the confirmatory meeting one member of the company and one representative appointed under s. 68 of the 1908 Act to represent a corporation which was a shareholder of the petitioning company. Counsel for the company contended that such a representative should be taken into account in considering whether there was a quorum; and Astbury, J. (whose reported judgment consists of only two lines, neither of which unfortunately gives any inkling of his reasons), held that the meeting was duly constituted, and he confirmed the capital reduction. From which we may safely infer that the court supported the contention of counsel for the petitioning company.

As regards the actual giving of votes, Table A, it will be remembered, provides by art. 58 that votes may be given either personally or by proxy. Proxies given by a corporation form the subject matter of art. 59: "The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company." Quite apart from this, the question of a corporation's power to give a proxy arose in the well-known decision of *In re Indian Zoedone Company*, 26 Ch. D. 70, where the Lord Chancellor observed at p. 78: "Then the next point suggested, as to a corporation not being able to give a proxy, also appears to me, in a case in which it is not disputed that a corporation could be a member of a company, and a proprietor of shares, to have nothing in it; and if this corporation which gave the proxy was the proprietor of the shares in question, there seems to be no fault to find with the manner in which the proxy was given. It is given under the common seal with the signatures of two directors, and countersigned by the secretary." *The Queen* v. *Samuel* [1895] 1 Q.B. 815, also deals with the giving of a proxy by a body corporate; but that is really a special case as it was concerned with the Thames Conservancy Act, 1894, and it does not assist us in considering the 1929 Act and Table A.

In conclusion, we might remind ourselves that art. 63 of Table A deals with the corporations acting by representatives at meetings, and it is, in phraseology, very similar to s. 116 itself. However, for the purposes of comparison, it runs thus: "Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company."

SUGAR BEET MARKETING.

The Minister of Agriculture and the Secretary of State for Scotland have appointed Mr. F. J. Wrottesley, K.C., to hold a public inquiry into objections received to the Sugar Beet Marketing Scheme. The hearing will be opened at 10.15 a.m., on Thursday, 8th October, at Middlesex Guildhall, Westminster, S.W.1. The inquiry will be conducted in accordance with the Agricultural Marketing (Public Inquiry) (Great Britain) Rules, 1932.

A Conveyancer's Diary.

Maintenance—Vesting Postponed after 21—Directions in Will regarding Income after 21—Whether overridden by T.A., s. 31 (1) (ii).

THE decision of the Court of Appeal in *Re Turner's Will Trusts: District Bank, Ltd.* v. *Turner* (1936), 155 L.T.R. 266, is important, especially as it overrules the decision of the court below and also two other decisions of judges of the court of first instance.

Put shortly, the point was whether the provision regarding maintenance in the T.A., 1925, s. 31 (1) (ii), to the effect that where the vesting is postponed to a later date than the attainment of twenty-one the trustees shall pay the income to him until he attains a vested interest or dies, is an absolute direction to the trustees so as to override any provisions to the contrary contained in the trust instrument.

The facts were, as appears from the L.T.R., that a testator bequeathed a share of his residuary estate to the children of a deceased son who should attain the age of twenty-eight, and the will provided for payment to them until attaining that age of such income for their maintenance as might be necessary, and the will proceeded: "And shall during the suspense of absolute vesting of any such share accumulate the surplus if any of the income thereof at compound interest by investing the same and the resulting income thereof in any of the investments hereby authorised in augmentation and so as to follow the destination of the share from which the same shall have proceeded but with power to apply any such accumulations in any subsequent year for or towards the maintenance education or benefit of the grandchild for the time being presumptively entitled as aforesaid in the same manner as such accumulations might have been applied had they been income arising from the original share in the then current year."

There were three grandchildren, two of whom had attained twenty-eight, but the other had attained twenty-one in 1931, and died in 1934.

If the trusts, expressed in the will, for accumulation were void, then the income not required for the deceased grandchild was after his death to be accumulated, and on his death the accumulations became added to the shares of the other two. In fact, the deceased grandchild being otherwise amply provided for, the trustees accumulated the whole income of his share.

It was contended that the accumulations must be paid to the estate of the deceased grandchild because the income ought to have been paid to him under the T.A., 1935, s. 31 (1) (ii), which overrode the trusts of the will in this respect.

Section 31 (1) (ii) reads as follows:—

"(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then subject to any prior interests or charges affecting that property—

"(i) During the infancy of any such person, if his interest so long continues, the trustees may at their sole discretion pay to his parent or guardian or otherwise apply for his maintenance or benefit the whole or such part, if any, of the income of that property as may in all the circumstances be reasonable . . .

"(ii) If such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him until he either attains a vested interest therein or dies or until failure of his interest."

There is a proviso which is not material for the present purpose.

Sub-section (2) provides that during the infancy of any such person the residue of the income shall be accumulated and the accumulations applied as is there directed.

Then reference was made to s. 69 (2) of the T.A., which it was said subjected the direction in s. 31 (1) (ii) to any contrary directions in the will.

Section 69 (2) reads—

"The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust and have effect to the terms of that instrument."

Against that it was said that s. 69 (2) only applies to powers and not to trusts, and that s. 31 (1) (ii) created a trust, the effect of that being that s. 69 did not affect the matter, and s. 31 (1) (ii) being imperative overrode the expressed trusts of the will.

The point has been before the court in two other cases: *In re Spencer* [1935] 1 Ch. 533, Clauson, J., decided that s. 31 (1) (ii) overrode the trusts of the will. His lordship expressed the view that if cl. (ii) of sub-s. (1) of s. 31 had been expressed in the form of a power then *primâ facie* s. 69 (2) would have applied: in *Re Recarde-Leaver's Will Trusts*, Luxmoore, J., took the same view; in *Re Turner*, Bennett, J., followed those decisions.

All those decisions were overruled by the Court of Appeal in the instant case.

Romer, L.J., by whom the judgment of the court was delivered, went very fully into the matter.

In the first place, after stating the facts and referring to the sections which I have mentioned, the learned lord justice pointed out that the T.A., 1925, was a consolidating Act and was, to say the least of it, unlikely to alter the law in any substantial manner.

Then his lordship referred at length to various other provisions of the T.A., 1925, and other Acts, and proceeded to refer to the L.P.A., 1922, s. 88, which, as he said, contained a provision precisely in the terms of s. 31 (1) (ii) of the T.A., 1925, but in s. 88 (6) of the Act of 1922 it is provided that "this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, under which the interest arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained." His lordship continued: "It is plain, therefore, that when the legislature in 1922 imposed upon trustees for the first time the duty of paying the income to the person contingently entitled from the time when he attains his majority to the time when his interest becomes vested, it did not intend to override any directions or expressions of intention to the contrary contained in the instrument under which such person's interest arose."

Then followed the L.P. (Amend.) A., 1924, which was intituled to be for the purpose of facilitating the consolidation of the law relating to conveyancing and property, settled land, trustees, etc. That Act made amendments in the Act of 1922 but did not amend s. 88 of the Act of 1922 in any material respect.

Of course neither the Act of 1922 nor that of 1924 was ever intended to come into operation but only to form the basis of consolidation.

His lordship said "It is incredible that by the T.A., 1925, the legislature intended to change the law still further, and in so radical a manner as to make the provisions of cl. (ii) of sub-s. (1) of s. 31, override the provisions of the instrument creating the trust. If it is possible, therefore, s. 69 (2) of the Act ought to be so construed as to make it consonant with s. 88 (6) of the Act of 1922."

His lordship pointed out that Part II of the Act was intituled "General Powers of Trustees and Personal Representatives" and was sub-divided into groups, one of which is headed "Maintenance Advancement and Protective Trusts," and contains ss. 31, 32 and 33. Section 31 deals with maintenance, s. 32 with advancement and s. 33 with protective trusts.

The learned lord justice came to the conclusion that s. 31 might properly be called comprehensively the statutory powers of maintenance, just as s. 32 might be called comprehensively the powers of advancement. The fact that s. 31 contained provisions that were directory was immaterial. Such directions were ancillary to and merely a part of the powers conferred by the sections.

Consequently the court held that the whole of s. 31 was "one of the powers conferred by this Act" and, therefore, by virtue of s. 69 (2), only applies if and so far as a contrary intention is not expressed in the instrument creating the trust, and has effect subject to the terms of that instrument.

The result was, of course, that the accumulated income belonged to the other two grandchildren and not to the estate of the deceased grandchild.

A curious point in this case was that the person entitled to the estate of the deceased grandchild supported the contention of the other two grandchildren because, if she had received this £3,000, the rate of estate duty payable on his estate would have been increased and the actual increase in the duty would have amounted to £26,000, so by receiving £3,000 she would have lost £23,000. So the Attorney-General was brought in to argue that she was entitled to it.

The judgment of Romer, L.J., in this case is a most interesting and closely reasoned one, and I advise my readers to read it.

Landlord and Tenant Notebook.

Unfitness of New House.

On being consulted by a tenant who complains that his recently taken house is out of repair and that the landlord will do nothing about it, the practitioner's first inquiry will relate to the terms of the lease or tenancy agreement. If these impose no liability on the landlord, and the Housing Acts do not apply, and there is no question of breach of some collateral warranty, the advice to be given must be discouraging. It can be summed up in one of two short excerpts from judgments: "There is no law against letting a tumbledown house," from *Robbins* v. *Jones* (1863), 15 C.B. (N.S.) 221 (Erle, L.J., at p. 240), or "there was no obligation on the landlord to make a communication as to the state of the house," from *Keates* v. *Cadogan* (1851), 20 L.J., C.P. 76 (Jarvis, C.J.).

These expressions are, of course, applications of the "*caveat emptor*" rule to the law of landlord and tenant, a lease being a sale *pro tanto*. But the law affecting the sale of goods created a number of exceptions to that rule, of greater present importance than the rule itself, and a few years ago some of us were surprised to find that at least one such exception could play a part in a contract affecting realty. *Lawrence* v. *Cassel* [1930] 2 K.B. 83, C.A., and *Miller* v. *Cannon Hill Estates Ltd.* [1931] 2 K.B. 113, were cases in which builder-vendors of houses unsuccessfully defended actions by purchasers aggrieved at the defective condition of the subject-matter. In each case there had been a written contract to complete the house, decorate it, etc., in terms which made no express reference to standard of materials and of workmanship, though something was said about some other house (described, in the second case, as the "Show House," on the building estate). In *Lawrence* v. *Cassel* we have no report of the proceedings at first instance, and the Court of Appeal complained of the absence of a shorthand note, but argument before the latter tribunal centred round the effect of a conveyance on an agreement for sale. But in *Miller* v. *Cannon Hill Estates Ltd.*, Swift, J., who had tried the first-mentioned case, at first instance, took the opportunity of reviewing the position. For immediate purposes, all that concerns us is this: the judgment laid it down that in a contract to complete a house which is silent as

to quality of work and materials there is to be implied, at all events if the vendor be a builder or the owner of a building estate, a term that the workmanship shall be efficient and the materials reasonably suitable for a dwelling-house if the purchaser intends using it as such. His lordship implied this term from the circumstance that two people, one a layman and the other an expert, bargained about something in the province of the latter. The reasoning is, of course, parallel to that on which s. 14 (1) of the Sale of Goods Act, 1893, is based: "*caveat emptor*" does not apply when the vendor deals in the class of goods sold and the purchaser relies on his skill and judgment.

If there is a similar exception affecting the relationship of landlord and tenant, it seems natural to seek authority in reports of matters decided in Chancery.

Though neither decision was cited to the courts adjudicating in the two recent cases above mentioned, I think it can be said that *Cook* v. *Waugh* (1860), 2 Giff. 201, illustrates the rule and *Tildesley* v. *Clarkson* (1862), 30 Beav. 419, the exception.

In *Cook* v. *Waugh* the plaintiff had agreed to grant the defendant an underlease of a dwelling-house and had therein undertaken to carry out specified repairs. Before completion the defendant discovered, from a remark of the district surveyor, who had observed on the futility of papering walls which were doomed, that a great deal more was wrong with the house. The plaintiff reassured him, however, and he moved in. Finding the house unfit by reason of disrepair, he refused to accept the lease. As, however, his own specification had been complied with and he had taken possession when aware of the defects, specific performance was granted.

Tildesley v. *Clarkson* was an action in which similar relief was sought. There was again an agreement for an underlease of a house; but in this case the plaintiff was to finish building it before the term commenced. The defendant moved his furniture in on quarter-day and went into residence himself about a month later. Soon after which, he alleged, the house "began to tumble to pieces." Indeed, the evidence established an appalling state of affairs even allowing for the low standards of Victorian jerrybuilding; ceilings came down, joinery was bad, walls cracked and bulged and/or settled, pipes refused to function, drainage went wrong. Sir John Romilly, M.R., who at the request of the parties went and inspected the house personally, was satisfied that there was no exaggeration in this testimony. His lordship was also satisfied that the plaintiff *bonâ fide* thought all was well. But the gist of the judgment is that in every case of that description, namely the case of a contract to finish and deliver a new house to a tenant who was to enter into a covenant to keep it in repair, there was implied an undertaking to deliver it in a state of repair proper to a house of that character.

I have included the factor that the agreement expressly called for a repairing lease in what I have called the gist of the judgment, but am not confident that this would be a condition precedent to liability of the landlord in every case. If the landlord undertook repairs, the matter would be unimportant; but if the agreement for a lease did not mention repairing, so that the tenant would be under an implied covenant to keep the premises in good and tenantable repair, I take it the position would be the same. There can be little doubt that the conclusion arrived at by Sir John Romilly proceeded from considerations similar to those which actuated Swift, J.; here are two people bargaining: one is to finish building a house, the other is to live in it; without the latter so stipulating, the former being aware of his object must be taken to make his promises in accordance with that object.

It is to be noted that Swift, J., in his judgment in *Miller* v. *Cannon Hill Estates Ltd.*, was at pains to limit the implication to a case of a builder or a building estate owner building for an intending resident. Indeed, the learned judge carefully pointed out that a man might buy a dwelling-house without any intention of using it as such. There was, of course, no counterpart in the purchasers' cases to the factor of the repairing covenant which supported the implication in *Tildesley* v. *Clarkson*. On the other hand, in the latter case it does not appear that the landlord or intending landlord was the actual builder or was "developing" land, *i.e.*, was someone on whose skill and judgment the defendant relied. The acquittal of bad faith suggests the contrary, and as the statement of facts shows that the plaintiff's lease was a trust lease, we may take it that he had no technical qualifications either as producer or as middleman, so that, while fundamentally the reasoning is on similar lines, in detail there is some difference in the steps it takes.

Our County Court Letter.

THE AVAILABILITY OF RAILWAY TICKETS.

In the recent case of *London Midland & Scottish Railway Co.* v. *Flowers*, at Stratford-on-Avon County Court, the claim was for 16s. 8d., being the difference between the cost of the single fare, at 1½d. per mile, and the return fare, at 1d. per mile, from Sheffield to London. The defendant had travelled by the old Midland route, via Leicester and Kettering, to London, using the return halves of two tickets. One was an L.M.S. ticket from Sheffield to Birmingham, but the other was a ticket from Birmingham to London, issued by the Great Western Railway. The latter did not touch Sheffield, and it was contended that the defendant had broken the proviso in brackets in the following condition: "Passengers holding ordinary return tourist and monthly return tickets (covering places served by the lines) are allowed to travel on the return journey between such places." The defendant pointed out that the plaintiffs advertised that the tickets were available by any route going north, and he contended that he was entitled to break his journey. His Honour Judge Drucquer held that the condition implied that the termini must be served by both lines. As the Great Western did not serve Sheffield direct, the defendant had travelled without a proper ticket. Judgment was given for the plaintiffs in the above case, and for 16s. 4d. in another case between the same parties. A special certificate for costs, £1 13s., was given under the County Courts Act, 1888, s. 119.

LIVESTOCK AS GOODS.

In the recent case of *Woodgate* v. *Parker*, at Burton-on-Trent County Court, the claim was for £17 10s., as damages for breach of warranty. The plaintiff's case was that he bought four pigs from the defendant, but they died shortly afterwards, and a post-mortem examination showed that they had had swine fever. The period of incubation varied from five to twenty-one days, and the disease was similar to typhoid in human beings. A submission was made that there was no case to answer, as there was no express warranty, and reliance had been placed on the implied warranty under the Sale of Goods Act, 1893, s. 14, but this only applied to manufactured articles. The submission was overruled, and the defendant's case was that the plaintiff selected the pigs, which were marked with scissors, and were delivered four days afterwards, when they were still free from disease. His Honour Judge Longson held that the above section was not restricted to manufactured goods, and judgment was given for the plaintiff, with costs.

EXECUTOR'S RIGHT TO POSSESSION.

In the recent case of *Jefferies* v. *Jefferies and Jefferies*, at Cheltenham County Court, the claim was for possession of The Oaklands, Bledington. The plaintiff's case was that the property was bought by his mother in 1915, and she lived there until her death in 1933. The plaintiff and his sister, the second defendant, were her executors, and in May, 1934, it was proposed to sell the property. In May, 1934, however,

the second defendant alleged that her father, the first defendant, was a tenant of the property, and had been so prior to the purchase of the property by his wife, the testatrix. It was further contended that the first defendant had afterwards paid the interest on a mortgage, and also the rates. Evidence for the plaintiff was given by a former rating officer to the Stow-on-the-Wold Rural District Council, to the effect that the first defendant had never been assessed as occupier. An income tax inspector stated that in November, 1932, he interviewed the first defendant, who stated that, being an undischarged bankrupt, he was neither the occupier nor the owner, but a lodger, as shown by certain letters. The second defendant's evidence was that the family had all lived together until 1928, when the plaintiff left, and that the first defendant had paid rent. His Honour Judge Kennedy held that on the evidence, particularly the letters, he was not satisfied that the first defendant was the tenant. Judgment was given for possession in twenty-one days, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

UNBORN CHILD AS DEPENDANT.

Problems as to the number of alleged dependants may give rise to difficulties of procedure, as in *McNabb* v. *R. Costain and Sons (Liverpool) Limited and Atkinson*, at Liverpool County Court. The applicant's case was that her deceased son had died, as a result of a fall from a ladder, while working for the first respondents. The applicant, being a widow, had been totally dependent upon the earnings of the deceased for the maintenance of herself and two children. The second respondent's case was that the deceased was the father of her unborn child, but this allegation was not admitted by the applicant. By consent, an award was made in favour of the applicant for £220 and £60 in respect of one child, with costs to be taxed. His Honour Judge Procter stated that, with regard to the contention of the second respondent, no decision could be made until after the birth of the child. Her claim was therefore adjourned *sine die*, i.e., until after the birth of the illegitimate child, whose paternity would require proof, for which purpose the case could be restored to the list.

JAUNDICE FROM RATS.

In *Luke* v. *Broomhill Colliery Co. Ltd.*, at Newcastle-on-Tyne County Court, an award was claimed by reason of the death of the applicant's husband from jaundice. The latter was contracted by reason of the deceased having worked in water infected by rats, and his food had also been exposed to infection. The respondents' case was that, although they had not at first admitted that the death was due to the disease, the fact that the germ had been found in one of the kidneys of the deceased had caused them to admit liability. His Honour Judge Thesiger therefore made an award by consent of £600 for the applicant and her four children.

ACCIDENT TO TROLLEY OMNIBUS DRIVER.

In *Gallier* v. *Walsall Corporation*, at Walsall County Court, the applicant had had an accident while driving a trolley omnibus on the 21st December, 1934. The medical evidence for the applicant was that, after the accident, he trembled from head to foot, owing to nervous shock. For the previous twenty-four years there had been no tremor or symptom of organic disease, but he was now suffering from neurosis as a result of the accident. The respondents' medical evidence was that the applicant was suffering from paralysis agitans, which was not attributable to the accident. In a reserved judgment, His Honour Judge Tebbs observed that all the medical witnesses agreed that, whatever the cause, the tremor disabled the applicant from further work. The respondents contended that the paralysis agitans was coming on before the accident, as the applicant's numerous mishaps had affected his nervous system. This was denied by the applicant, who had received certificates from the National Safety First Association in 1929, 1930, 1931 and 1932, and their medal in 1933, as a result of his not having been involved in any accident for which he was in any way responsible. Evidence had also been given by a farmer that the applicant, before the accident, was always fit and a fair shot. Without deciding whether the applicant's condition was due to paralysis agitans, or some other nervous condition, His Honour held that the condition was due to the accident, and an award was accordingly made, with costs.

Obituary.

Sir J. W. WESSELS.

The Right Hon. Sir Johannes Wilhelmus Wessels, Chief Justice of South Africa, died at Pretoria on Sunday, 6th September, at the age of seventy-four. He was educated at the South African College, the Cape University, and Downing College, Cambridge, and was called to the Bar by the Middle Temple in 1886. He joined the Bar of the Cape Supreme Court in the same year, and that of the Transvaal in 1887. On the establishment of the Supreme Court of the Transvaal in 1902, he was raised to the Bench as second Puisne Judge. He received the honour of knighthood in 1909. In 1920 he became Judge President, and in 1923 he was elevated to the Appellate Division of the Supreme Court of South Africa. He became Chief Justice in 1932, and was sworn of the Privy Council in 1933.

Mr. A. E. EASTWOOD.

Mr. Albert Edward Eastwood, B.A. Cantab., solicitor, of Bolton, died at Horwich, on Monday, 7th September, in his sixtieth year. Mr. Eastwood was admitted a solicitor in 1905.

Mr. J. E. JONES.

Mr. John Edmund Jones, retired solicitor, of York, died at Norton, near Malton, on Monday, 31st August, at the age of eighty-nine. He was admitted a solicitor in 1875, and practised in York until his retirement about ten years ago. Mr. Jones was for over thirty years Secretary of the Yorkshire Fishery Board and Treasurer to the Linton Lock Navigation. He was also a Deputy Sheriff for the County of York.

Mr. G. G. G. WHEELER.

Mr. George Gabriel Glasspool Wheeler, solicitor, senior partner in the firm of Messrs. Cranfield & Wheeler, of St. Ives, Hunts, died on Tuesday, 1st September, at the age of sixty-eight. He was admitted a solicitor in 1891. Mr. Wheeler was a member of the Town Council of St. Ives from 1911 until 1924, and Mayor of St. Ives from 1917 until 1919.

Books Received.

Palmer's Private Companies. Their Formation and Advantages. Thirty-seventh Edition, 1936. By Alfred F. Topham, Bencher of Lincoln's Inn, one of His Majesty's Counsel, and A. M. R. Topham, B.A., of Lincoln's Inn, Barrister-at-Law. Crown 8vo. pp. xi and (with Index) 104. London: Stevens & Sons, Ltd. 2s. net.

The Book of English Law. By Edward Jenks, D.C.L. (Oxon), Hon. D.Litt. (Wales), Hon. LL.D. (Bristol), Barrister-at-Law, Emeritus Professor of English Law in the University of London. Fourth, Revised, Edition, 1936. Demy 8vo. pp. xix and (with Index) 460. London: John Murray. 12s. net.

Walls have Mouths. By Wilfrid Macartney, with Prologue, Epilogue and Comments at the end of the majority of the Chapters by Compton Mackenzie. 1936. Demy 8vo. pp. 440. London: Victor Gollancz, Ltd. 10s. 6d.

To-day and Yesterday.

LEGAL CALENDAR.

7 SEPTEMBER.—On the 7th September, 1837, the young widow of Etienne Rouquette of Mende, in the South of France, was tried, together with her lover, for the murder of her husband. For four days and nights she was proved to have deliberately poisoned his food, but the jury in convicting her found "extenuating circumstances." They may have been moved by her extreme youth or by the fact that the marriage was a forced one. She was sentenced to penal servitude for life and exposure in the pillory, but the crowd in court were dissatisfied that she had escaped with her life. She sobbed bitterly at the eternal separation from her lover, who was acquitted.

8 SEPTEMBER.—On the 8th September, 1815, John Walter Huddleston was born in Dublin. He was the last judge appointed a Baron of the Exchequer.

9 SEPTEMBER.—On the 9th September, 1834, a woman called Mary Ashley, and her daughter, were tried at the Surrey Sessions for robbing the dead. An entire household at Camberwell had been attacked by cholera and the head of the family having been removed to escape the peril, the two women had been called in to nurse the rest. All their charges died and they were caught by the parish beadles removing property from the house. The daughter was acquitted, but the mother was sentenced to seven years' transportation.

10 SEPTEMBER.—On the 10th September, 1817, the great case of *Hodgson* v. *Scarlett* was heard at the Lancaster Assizes. The plaintiff was an attorney and the defendant was a leader of the Bar, who afterwards became a judge. During a trial at the previous assizes Scarlett had called Hodgson "a fraudulent and wicked attorney," and it was in respect of these words that the action was brought. Mr. Baron Wood, however, held that a barrister could not be sued for words spoken as counsel in a case, and his decision was upheld on appeal.

11 SEPTEMBER.—Edward Hall Alderson, the eldest son of the Recorder of Norwich, was born at Great Yarmouth on the 11th September, 1787. Four years later his mother died of consumption, leaving him a life-long regret for his loss. He adopted his father's career, and, having joined the Inner Temple, he was called to the Bar there in 1811. But he rose higher than his parent, and, in 1830, became a Justice of the Common Pleas. He was later transferred to the Court of Exchequer. He made a good judge, quick (sometimes too quick), acute in reasoning and with a pleasant wit.

12 SEPTEMBER.—Francis Stirn, a proud, touchy, penniless and quarrelsome young German, who had come to England to seek his fortune, failed and behaved abusively to all who had tried to help him, at last, in a fit of desperation, shot a surgeon who had befriended him. He was tried for murder at the Old Bailey on the 12th September, 1760. He appeared in court in a green nightgown, almost fainted several times (for after his arrest he had attempted a hunger strike), and after sentence of death asked that he might go to his execution in a coach with a clergyman. On refusal, he bowed low to the court and retired. He was never hanged, for he succeeded in poisoning himself in prison.

13 SEPTEMBER.—On the 13th September, 1773, Elizabeth Herring, condemned to death for murdering her husband, was executed. Having been drawn from Newgate to Tyburn on a sledge, she was stood on a stool against a post to which a rope round her neck was made fast by two spikes. Then, the stool having been taken from under her, she was soon strangled. Afterwards the body was burned. Twenty thousand people were present.

THE WEEK'S PERSONALITY.

When Sir John Huddleston succeeded Mr. Baron Pigott in the Court of Exchequer, the occasion was historic, for never again would such an appointment be made. The shadow of the great Judicature Act already lay on the ancient court and, after it had faded into the mists of legal history, Huddleston was accustomed to call himself "The Last of the Barons." He had been a great advocate and the quality of his advocacy remained with him on the Bench, particularly in his handling of juries. "He would leave his seat, and, approaching the jury-box, point out most affably perhaps some difficulties in a plan or a document; he would flatter, coax and wheedle them; he became in fact a thirteenth juryman and it was almost impossible to get a verdict when his views were the other way." A fault which rendered him sometimes ridiculous was his snobbish delight in the society of fashionable persons. One rather cruel story is told of how, at a continental resort, he wrote down his name in the hotel book with all possible letters of distinction after it. Some ill-natured person added "Toady and Tuft Hunter," and a local paper, mistaking them for English titles of honour, copied them in announcing his arrival. Nevertheless, in spite of his faults, he was a good and courageous judge.

TWO SIDES TO A QUESTION.

In a case in the Court of Appeal towards the end of last term two decisions of the House of Lords fell to be considered and they seemed to point so clearly in different directions that MacKinnon, J. (then lending his learning to the appellate tribunal) observed: "My *nisi prius* mind is unable to explain how both those cases can be right." The situation recalls a well-known incident, when counsel, having dealt with certain discrepancies between two House of Lords judgments, was asked by the judge: "Do you mean to suggest that their lordships overruled themselves?" "No, my lord," he replied; "they distinguished themselves." MacKinnon, J., further said that, "if by some happy catastrophe all the cases since that of Barnabas had been destroyed our task would have been simple." He might have considered the words of Carr, J., in an American case: "I have cited no cases in support of this opinion; not that I have not read and considered and puzzled myself with the multitude that were commented on in the argument; but because finding them like Swiss troops fighting on both sides, I have laid them aside and gone upon what seems to be the true spirit of the law."

JULIUS CÆSAR.

In a daily paper recently there was a somewhat lengthy correspondence as to the prevalence of the name "Julius Cæsar" in England.

> "Imperious Cæsar, dead, and turned to clay
> Might stop a hole to keep the wind away."

And now, it seems, that that name in which the envious Cassius saw so little magic has descended to barbers and garden furniture makers. Still, in the eighteenth century, I believe, the Guards were commanded by a Julius Cæsar, and in Elizabethan days a Julius Cæsar sat as judge of the Admiralty and later as Master of the Rolls. He was a good man, and it was said of him that when he was old "he was kept alive beyond nature's course by the prayers of those many poor he daily relieved." As a judge, however, he was less distinguished and the counsel in his court would sometimes pass a "slye jest" upon him as once when, during the trial of a case somewhat too intricate for his capacity, a barrister engaged in the matter seized the occasion of some noise in court to call out: "Silence, there, my masters, ye keep such a bawling, the Master of the Rolls cannot understand a word that's spoken."

Mr. William Ward-Higgs, solicitor, of Mincing Lane, E.C., and of Rochampton, left £10,681, with net personalty £10,644.

Notes of Cases.

Judicial Committee of the Privy Council.

Akbar Khan *v.* Attar Singh.

Lord Blanesburgh, Lord Atkin, Sir Lancelot Sanderson, Sir Shadi Lal, Sir George Rankin. 6th April, 1936.

India—Money Deposited—Receipt containing Terms of Repayment—Whether Deposit Repayable on Demand or Loan—Limitation—Whether Promissory Note—Indian Stamp Act (Act II of 1899), s. 35—Indian Limitation Act (Act 9 of 1908), Sched. I.

Appeal from a decision of the Court of the Judicial Commissioner for the N.W. Frontier Province of India, allowing an appeal from a decree in favour of the plaintiff issued by the subordinate judge of Mardan.

The plaintiff, Akbar Khan, alleged that in 1917 he deposited with the defendant and his father, who were moneylenders, Rs.43,900. The instrument executed in respect of the deposit contained, *inter alia*, the words " . . . this receipt is hereby executed by . . . Attar Singh . . . for Rs.43,900 . . . received . . . for . . . Akbar Khan. This amount to be payable after 2 years. Interest at the rate of Rs.5–4–0 per cent. per year to be charged . . . Stamp has been duly affixed." The document was signed by the defendant and his father. According to the plaintiff, the defendant and his father, in 1919, asked the plaintiff what should be done about the money, and they agreed at his request to keep it, to credit the interest, and to pay it to the plaintiff when wanted. The father having died before trial, the action was defended by the son, Attar Singh. He alleged, *inter alia*, that he had repaid the money, a plea not accepted by either of the courts in India. The defendant also relied upon the Limitation Act. The subordinate judge decided, as a preliminary issue, in favour of the defendants that the document relating to the deposit was a promissory note. As such it was improperly stamped and was therefore inadmissible in evidence for any purpose under the Indian Stamp Act, 1899. Leave was, however, given to the plaintiff to amend his plaint, and judgment was eventually given in his favour.

Lord Atkin, delivering the judgment of the Board, said that the absence of any receipt, the non-return of the alleged promissory note, and the failure by the defendant to produce any account books dealing with the point amply supported the trial judge's finding that the money had never been repaid. With regard to the defence on the Limitation Act, by Art. 59 of Sched. I to the Act, " For money lent under an agreement that it shall be payable on demand," the limitation is three years from the time when the loan was made. By Art. 60: " For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable," the period is three years from the time when the demand was made. By Art. 120: " For a suit for which no period . . . is provided . . . " the period is six years from the time when the right to sue accrued. It was accordingly necessary to determine whether this was money lent to the defendant, or deposited under an agreement that it should be payable on demand. It should be remembered that the terms " loan and deposit payable on demand " were not mutually exclusive. A deposit of money was not confined to a bailment of specific currency to be returned in specie. It might involve the relation of debtor and creditor, a loan under conditions. A demand by the depositor would seem to be a normal condition of the depositee's obligation to repay. It was unnecessary, however, here to decide any question with regard to implied conditions, because the plaintiff's case rested on an express stipulation made in 1919. Before, however, finally deciding the rights of the parties, their lordships thought it necessary to discuss the judge's decision that the document was a promissory note. They had come to the conclusion that the document was not a promissory note. The Indian Stamp Act adopted the definition in s. 4 of the Negotiable Instruments Act, 1881, where a promissory note was described as " an instrument in writing . . . containing an unconditional undertaking, signed by the maker, to pay a certain sum . . . only to, or to the order of, a certain person or . . . bearer . . . " By s. 13 of the same Act " a ' negotiable instrument ' means a promissory note . . . payable . . . to order . . . or to the bearer." If the document in question was otherwise within the definition of a promissory note, it would seem that it must be negotiable, for there appeared to be no words indicating an intention that it should not be transferable. It was indeed doubtful whether a document could properly be styled a promissory note which did not contain an undertaking to pay, but merely an undertaking which had to be inferred from the words used. It was plain from s. 4 of the Act of 1881 that an I.O.U. was not a promissory note, though of the implied promise to pay there could be no doubt. It also seemed from the section, however, that express words such as " I promise " were unnecessary. Their lordships preferred to decide this point on the broad ground that such a document as this was not, and could not be, intended to be brought within a definition relating to documents which were to be negotiable instruments. Receipts and agreements generally were not intended to be negotiable, and serious embarrassment would be caused if the negotiable net were cast too wide. This document was plainly a receipt for money containing the terms on which it was to be repaid. This view of the meaning of a promissory note appeared to coincide with the grounds of decision in *Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue* (1888), 21 Q.B.D. 352. It would have the effect of overruling some decisions in the Indian courts, notably *Manick Chund* v. *Jomoona Doss* (1880), I.L.R. 8 Calc. 645. In all the circumstances, their lordships would humbly advise His Majesty that the appeal should be allowed.

Counsel: *Upjohn*, K.C., *W. Wallach* and *J. M. Pringle*, for the appellant: *De Gruyther*, K.C., and *M. H. Rashid*, for the respondent.

Solicitors: *Stanley Johnson & Allen*; *Nehra & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

House of Lords.

Ferrier *v.* Scottish Milk Marketing Board.

Lord Blanesburgh, Lord Atkin, Lord Thankerton, Lord Macmillan and Lord Maugham.
16th July, 1936.

Milk Marketing—Scheme—Different Classes of Producers—Contributions Levied from One Class used to Compensate the Other—Validity.

Appeal against an interlocutor of the First Division of the Court of Session, Scotland, dated the 30th May, 1935.

The respondents were the statutory body administering the Scottish Milk Marketing Scheme, of which the appellant Ferrier was a registered member. Members were divided into two main categories: (1) ordinary producers, who disposed of their product through the agency of the board, and were required to pay the proceeds of sale into the fund administered by the board; and (2) producer-retailers, who produced milk and also sold the product themselves, and were not required to pay the proceeds of sale into the fund. The appellant was a producer-retailer, and was liable to contribute to the costs of operating the scheme. At the end of each month the board sought to recover the " costs of operating the Scheme " rateably from all members by means of a " levy " calculated at so much a gallon of milk on every gallon disposed of by each member. The appellant was called on to pay that charge for each of the months December, 1933, to July, 1934, inclusive, but declined to do so, contending that, in computing the gross costs of operating the scheme, the board had improperly included a sum which was the difference

between the price received for a quantity of milk disposed of in the secondary market and the price which the board estimated would have been received for that quantity in the primary market, and that to include that notional sum as a cost of operation was *ultra vires* the respondents. There were two main outlets for the sale of milk: the primary or liquid market, in which milk was sold for consumption, and the secondary or manufacturing market, in which milk was sold for manufacture into cheese, butter, condensed milk, etc. The quantity of milk produced in Scotland was far in excess of the demand from the primary market. The Court of Session gave judgment in favour of the Board for the sum claimed.

LORD BLANESBURGH and LORD ATKIN said that they agreed with Lord Thankerton's judgment.

LORD THANKERTON said that the milk produced by the second class of registered producers, which included the appellant, was practically all sold in the liquid market by the producers to their own customers. The appellant himself was able to dispose of all his milk in the liquid market. The proceeds of sales paid to the board by the ordinary producers might be said to form a pool, the free proceeds of which, after certain deductions, were divided among the ordinary producers according to the number of gallons of milk thus sold by each producer and irrespective of whether the particular producer's milk in fact had been sold for liquid or manufacturing purposes. The respondents sought recovery of the sum sued for in the terms of s. 24 (2) of the scheme, which provided: "(2) . . . The board . . . shall recover from registered producers the proceeds of the sale of whose supplies of the regulated product are not required to be paid into the fund, such contribution as the board may from time to time consider necessary to cover the costs or operating the scheme . . . " It was also provided by s. 24 (2) that, subject to an adjustment as to nine-tenths in the case of the second class of producers, the ordinary producers were equally liable with the second class for the contribution in question; but (as would appear from s. 24 (3) (*e*)) the produce of the contribution from both classes would go to benefit only the ordinary producers, who would thus not only get the return of their own contributions, but would also have divided among them the contributions for the second class, who would get nothing back. In short, the contributions levied from the second class would form compensation to the ordinary producers for the greater diversion of their milk into the manufacturing market in order to keep up the level of prices in the liquid market. In other words, by that means the board were *pro tanto* extending the averaging of the proceeds of sales in the two markets so as to affect the second class of producers. He had come to the conclusion that the contribution challenged by the appellant was not authorised by the scheme, and was beyond the powers of the board. In the first place, to collect a contribution and thereafter to return to a limited number of the contributories the amount of their contributions, did not, in his opinion, comply with the express provisions of s. 24 (2) of the scheme. In the second place, he was of opinion that the board were not entitled to extend the averaging of sale prices in the two markets so as to affect the second class of producers. Their only power of averaging sale prices in the two markets was conferred by s. 24 (3) (*e*). Not only were the terms of that provision inapplicable to the second class of producers, but the latter were expressly exempted from the operation of that paragraph. That rendered it unnecessary to consider the arguments as to the meaning of the word "cost," for, however wide or artificial, in relation to its context, that meaning might be, it could not include the cost of an operation of the scheme which was not permitted by the statutory scheme. The grounds on which he had formed his conclusions did not appear to have been considered by the courts below in the present case. He was therefore of opinion that the respondents had included among the elements which constituted the *cumulo* amount of the contributions sued for an element which they were not entitled to require from the appellant and which, in the present record, was not separable from the legitimate elements. That would not prevent the respondents, if they found it necessary, from bringing a fresh action for recovery of the legitimate elements in the contributions sought to be recovered: *Gillespie* v. *Russel* (1859), 3 Macq. 757; *Waterson* v. *Murray and Co.* (1884), 11 R. 1036. The appeal should be allowed.

LORD MACMILLAN gave judgment allowing the appeal.

LORD MAUGHAM concurred.

COUNSEL: *Duffes*, K.C., and *J. G. McIntyre*, for the appellant; *Reid*, K.C. (Solicitor-General for Scotland), and *J. L. Clyde*, for the respondents.

SOLICITORS: *Ince Roscoe, Wilson & Glover*, for *J. Sinclair Lawrie*, Edinburgh; *Ellis & Fairbairn*, for *Ketchen & Stevens*, W.S., Edinburgh.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Rofe *v.* Kevorkian.

Greer, Slesser and Scott, L.JJ. 27th July, 1936.

PRACTICE—ACTION BY EXECUTORS—INTERROGATORIES TO THEM—QUESTIONS AS TO BELIEF OF DECEASED—QUESTIONS ON MATTERS OF EXPERT OPINION.

Appeal from a decision of Greaves-Lord, J.

R. sold by auction to the defendant for £10,500 certain Indian manuscripts and miniatures described as belonging to the period of the great Moghul Emperors, Shah Jahan and Aurungzebe. R. subsequently died and the defendant having failed to pay the purchase money in full, his executors brought an action claiming the balance then due. The defendant denied the authenticity of the miniatures, alleging mutual mistake and fraud by R. After discovery, the defendant sought leave to administer interrogatories asking, *inter alia*, (*a*) whether R. believed that the catalogue description of the goods was accurate and that they corresponded with the description, and (*b*) certain questions as to the date and the period of the goods. Greaves-Lord, J., allowed the interrogatories.

GREER, L.J., allowing the plaintiff's appeal, said that though the question in whose reign the particular picture or miniature came into existence was in form a question of fact, yet at this time the question resolved itself necessarily into a question based on the opinion of experts called on one side or the other. There was no ground for allowing those interrogatories.

SLESSER, L.J., agreed, and in the course of his judgment said that a man might be asked by interrogatory as to his own belief, but the opinion of a person as to what a deceased man believed (unless that person was shown to be in some such relation that he was bound to have information as to the belief of the deceased) was not information which would tend to dispose fairly of the cause or matter or to save costs.

SCOTT, L.J., agreed.

COUNSEL: *van den Berg*, K.C., and *C. H. Dawes*; *Morris*, K.C., and *W. A. Davies*.

SOLICITORS: *Forsyte, Kerman & Phillips*; *Cardew Smith & Ross*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

County Valuation Committee for the County of Middlesex *v.* Assessment Committee for the West Middlesex Assessment Area.

Farwell, J. 14th and 16th July, 1936.

LOCAL GOVERNMENT—ASSESSMENT COMMITTEE—MEETINGS—REPRESENTATION OF COUNTY VALUATION COMMITTEE—RIGHT TO ATTEND—RATING AND VALUATION ACT, 1925 (15 & 16 Geo. 5, c. 90), ss. 1, 2, 18.

The plaintiffs directed their county valuation officer, or some duly authorised representative, to attend the meetings of the defendants during the hearing of all objections to draft valuation lists and all proposals to amend current valuation lists, both to inform himself of what took place and to tender information or advice and otherwise take part in the proceedings. The defendants claimed the right to exclude him, and in this action the plaintiffs sought a declaration that he was entitled to attend.

FARWELL, J., in giving judgment, read the title of the Rating and Valuation Act, 1925, and said that the fact that in earlier Rating Acts there was also reference to the promotion of uniformity in the valuation of property was not relevant. His lordship referred to ss. 1, 2, 18, 25, 31 and 37 and said that the defendants' power of regulating their own meetings was subject to the provisions of the Act. It did not entitle them to exclude the plaintiffs' officer. By s. 18 (2) every valuation committee must take such steps as they thought necessary to promote uniformity. If the plaintiffs thought it necessary for this purpose to direct their officer to attend these meetings, that was within the subsection, and the defendants could not nullify the step so taken by excluding him. However, the plaintiffs could not make him a member of the defendant body, whose constitution under the Act did not include such a person, and he was not entitled to participate in the assessment committee's decisions (*R.* v. *Surrey County Assessment Committee* [1933] 1 K.B. 776, a decision to the effect that a county valuation officer was not entitled to take any part in the decision of the committee). The plaintiffs could not direct him to do anything which under the Act he should omit, or *vice versa*, so that when the Act required notices, they must be given, and without them the plaintiffs by their representative could not participate in matters for which a notice was necessary.

COUNSEL: *W. E. T. Jones*, K.C., and *M. Rowe*; *Carr*, K.C., and *J. S. Henderson*.

SOLICITORS: *C. W. Radcliffe*; *H. G. Greenwood*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Alfred Priestman & Co. (1929) Ltd.

Bennett, J. 13th and 20th July, 1936.

COMPANY—DEBENTURE—PROPERTY CHARGED—LIQUIDATION—WHETHER DEBENTURE-HOLDER A CREDITOR—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 252.

By a debenture dated the 26th August, 1930, it was provided that the company "hereby charges with the said payments by way of floating charge, first, all stock in the possession of the company which has been purchased, acquired or appropriated by the company for the purpose of executing orders to the said John Crook . . . and secondly, all the machinery and loose plant of the company," John Crook having lent money to the company on the security of the debenture. The company having gone into voluntary liquidation by an extraordinary resolution passed on the 23rd December, 1935, the debenture-holder applied under s. 252 of the Companies Act, 1929, for a declaration that by the debenture the company had charged all the stock and machinery in its possession on the 23rd December, 1935, being the date of the appointment by the applicant of a receiver and manager.

BENNETT, J., in giving judgment, said that the applicant was a creditor within the meaning of the section, although he happened to be a secured creditor. Further, the property charged was not confined to property in the possession of the company on the date when the debenture was issued (see *Houldsworth* v. *Yorkshire Woolcombers' Association Ltd.* [1903] 2 Ch. 284, at p. 298; [1904] A.C. 355).

COUNSEL: *Radcliffe*, K.C., and *G. O. Slade*; *J. Lindon*.

SOLICITORS: *Maxwell, Batley & Co.*, agents for *Simpson, Curtis & Burrill*, of Leeds; *Robbins, Olivey & Lake*, agents for *Sampson, Horner & Co.*, of Bradford.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Spencer Flats, Limited.

Clauson, J. 27th July, 1936.

CONTRACT—LAND—RESTRICTIVE COVENANTS—APPLICATION FOR MODIFICATION—ARBITRATOR'S POWER TO ADJOURN APPLICATION TO COURT—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), s. 84 (2)—LAW OF PROPERTY (RESTRICTIVE COVENANTS DISCHARGE AND MODICATION) RULES, 1933, r. 9.

Certain old-fashioned houses, standing in gardens, looked on to a central garden, the enjoyment of which by them was preserved by the device of a conveyance to trustees. The houses formed part of a property known as Spencer Park, and were subject to certain restrictive covenants (e.g., that they should not be used otherwise than as private residences). In 1934, the company acquired No. 10, Spencer Park, and, though aware of the restrictions, pulled down the existing building, erecting another in modern style, planned to be available for letting in twelve flats. The building operations continued till September. Subsequently the owner of No. 21, Spencer Park, having decided to convert it into flats, and made an application under s. 84 (2) of the Law of Property Act, 1925, for the removal of the restrictions on the house, an official arbitrator made an order in August, 1935, for modification of the restrictions, on the terms that compensation should be paid to the two adjoining owners. In October, the owners of No. 9 and No. 11 (adjoining No. 10) threatened the company with an action upon the covenants. In December the company made an application under s. 84, and in June, 1936, the official arbitrator accordingly made an award in the form appended to the rules made under the section. The award provided for modification of the covenants and for payment to each of the two adjoining owners of £200. The company appealed against the award of compensation.

CLAUSON, J., in giving judgment, said that the arbitrator had acted on the footing that the adjoining owners were legally entitled to the benefit of the covenants. It had been argued that they had a right in equity only and that they had lost the right to enforce the restrictions, so that they should not have been awarded compensation. By s. 84 (2) machinery was provided for the determination by the court, on application, whether restrictions were enforceable. The Law of Property (Restrictive Covenants Discharge and Modification) Rules, 1933, r. 9, did not make it imperative for the arbitrator to adjourn the matter to the court when such a question arose, but if, on the proceeding under s. 84, a question was seriously raised which involved a question of law whether or not some of the objectors to the modification had lost the right to enforce the restrictions, the arbitrator would be unwise not to require the question to be raised before the court, since under the section arbitrators were not intended to deal with questions of law. Had a *bona fide* application to adjourn such a matter to court been raised and persisted in and the arbitrator had refused to adjourn it, his lordship would have felt bound to send the case back to the arbitrator. But in the present case, though the point had been raised, no suggestion had been made that it was a point of moment. The adjoining owners had proved that they had suffered loss by the diminished selling value of their houses and the matter had been treated as a question of figures. It had been argued now that there was enough evidence of acquiescence to make it necessary for the arbitrator to hold that, having regard to their conduct, the adjoining owners had lost their right to enforce the covenants. It could not, however, be held that mere delay made non-existent the loss owing to modification which had been assessed at £200. On the evidence before the court it could not be held that the adjoining owners have lost their rights and the appeal must be dismissed. If the company liked, they could abstain from paying the £200, thereby losing the benefit of the award and leaving the adjoining owners to bring an action on the covenants.

COUNSEL: *Vaisey*, K.C., and *Miss Haskell*; *Andrew Clark*.

SOLICITORS: *H. W. Clarkson, Wright & Co.*; *Vivash Robinson & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Gaskell & Chambers Ltd. *v.* Hudson, Dodsworth & Co.

Lord Hewart, C.J., du Parcq and Goddard, JJ.
7th May, 1936.

Contempt of Court—Allegation of—Pending Action—Circular issued by Defendant containing Comments and Enclosing Copy of Statement of Claim.

Motion for a writ of attachment for contempt of court against the defendants in an action, and order *nisi* for a similar writ against an agent of the same defendants.

The plaintiffs and the defendants were both manufacturers and sellers of apparatus and fittings in connection with hotels and public bars. The only partners in the defendant firm were two ladies. In December, 1935, the plaintiffs brought the action in question against the defendants, alleging that they had falsely and maliciously caused publication in 1935 of circulars disparaging their (the plaintiffs') apparatus. A copy of the statement of claim was duly delivered to the defendants. In February, 1936, a circular letter, purporting to be issued by the defendants, was published making adverse comments with respect to the bringing by the plaintiffs of the action. With each letter was enclosed a copy of the plaintiffs' statement of claim. Notice of motion having been given by the plaintiffs, the present motion was heard in March, 1936. It then transpired that the partners in the defendant firm had no knowledge of the issue of the circular and its enclosure. The husband of one of the defendants, principal traveller and publicity agent to the defendant firm, admitted that he alone had been responsible for the sending of the circular. He stated in an affidavit that he had had no intention of prejudicing the fair trial of the action, and no idea that the issuing of the circulars might constitute a contempt of court. The court adjourned the motion, and, in March, 1936, the order in question was made against the husband. The adjourned motion and the order *nisi* were now heard together. For the applicants (the plaintiffs in the action) reference was made to *Perry's Case*, cited in "*Champion*" *Newspaper Case* (1742), 2 Atk. 469, at p. 472; *Bowden* v. *Russell* (1877), 46 L.J. Ch. 414; *In re The William Thomas Shipping Co. Ltd.* [1930] 2 Ch. 368, at p. 372.

Lord Hewart, C.J., said that he refrained deliberately from making any remarks on the merits of the pending action, with which the court was not now concerned, the only question being whether anyone should be committed for contempt. It was apparent on the facts that the two ladies against whom the motion was directed were innocent. Apart from the fact that they gave their names to the defendant firm, they knew nothing. With regard to the husband of the one lady, it had been argued that, wherever an action was pending, it must be contempt of court to circulate a pleading in that action, even that of one's opponent, because possible witnesses might thereby be prevented from doing what otherwise they would have done. No case to which reference had been made approached supporting that proposition. It seemed idle to speak of a general rule where a case must be considered on its own merits. When the cause of the controversy between the parties was considered, it could not successfully be contended that what had been done amounted to a contempt. The words of Lord Russell of Killowen in *Reg.* v. *Payne* [1896] 1 Q.B. 577, at p. 580, were no less true to-day than when they were spoken. He (his lordship) wished also to call attention to the judgment of R. S. Wright, J., at p. 581. The motion must be refused and the order discharged.

du Parcq and Goddard, JJ., agreed.

Counsel: *Croom-Johnson*, K.C., and *P. Vos*, for the applicants (the plaintiffs); *N. Fox-Andrews* and *G. Gardiner*, for the respondents.

Solicitors: *Hicks, Arnold & Bender*, agents for *Glaisyer, Porter & Mason*, Birmingham; *J. D. Arthur & Co.*, agents for *E. W. Wragg*, Manchester.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Bertram *v.* Wightman.

Lawrence, J. 15th May, 1936.

Revenue—Income Tax—Property Consisting of House and Grounds—House not Occupied—Whether Grounds "Occupied"—Assessment in Respect of Grounds—Validity—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sched. A, No. I; No. VII, rr. 1, 2, 4; Sched. B, r. 4.

Case stated by the Commissioners for the General Purposes of the Income Tax for the Linton Division of Cambridgeshire.

The appellant, Bertram, was the owner of a property consisting of a house and buildings surrounded by 40 acres of land, comprising lawns and gardens, drives and pathways, woods and shrubberies. He vacated the property in December, 1933, after which it remained unoccupied. He did not retain any property, or continue to live, in the neighbourhood. The proportion of tax charged in respect of the house and buildings was discharged under r. 4 of No. VII of Sched. A to the Income Tax Act, 1918. Assessments having been made on the appellant under Scheds. A and B in respect of the land, he appealed to the General Commissioners. It was contended on his behalf (1) that the lands were incapable of occupation apart from the house; (2) that the occupier within the meaning of r. 2 of No. VII of Sched. A was the person having the actual use of the land, and that he could not be deemed to be the occupier as he had expressly refrained from exercising his right of user of the land; and (3) that as the land could not be let without the house, there could be no profits or gains chargeable to income tax in respect of it. It was contended for the Crown (1) that the land was assessable under Sched. A, as it was capable of actual occupation, and that the appellant, being the person having the right to use the lands, was in fact the occupier; (2) that the land was assessable under Scheds. A and B, whether occupied or not. The Commissioners decided that the appellant was properly chargeable as being the occupier within the meaning of the Income Tax Acts, and that the property was assessable irrespective of whether the occupier chose to exercise his rights of occupation. By Sched. A, No. VII, r. 1: "... Tax under this Schedule shall be charged on and paid by the occupier for the time being." Rule 2: "Every person having the use of any lands or tenements shall be deemed to be the occupier thereof." Rule 4: "Tax ... shall be charged on all lands ... whether occupied ... or not."

Lawrence, J., said that the appellant's contention that the words "having the use of any lands" in r. 2 meant "actually using the lands" would result in an apparent conflict between rr. 1 and 2 and r. 4. That conflict could not have been intended. It was material to note the words in r. 2, "shall be deemed to be," and the apparent conflict could be resolved by giving to r. 2 the meaning, "entitled to the beneficial use of any lands." The contention that "occupation" had the same meaning in the Income Tax Acts as in the law of rating was not supported by the *dictum* of Scrutton, L.J., in *Back* v. *Daniels* [1925] 1 K.B. 526, on which the appellant had relied. The difference between the law of rating and that of income tax was that the Statute of Elizabeth contained no definition of "occupier," and the question of occupation had therefore to be treated as one of fact, whereas r. 2 provided that a certain person should be deemed to be the occupier although he did not occupy the lands in fact. *Hill* v. *Gregory* [1912] 2 K.B. 61, was distinguishable because there the minerals in question were still vested in the landlord, and the lessees, not having entered on the land, did not come within r. 2. The appeal must therefore be dismissed. Since, however, the assessment now made on the lands was the same as that made on them when they were occupied with the house, the case must go back to the Commissioners for them to ascertain the annual value of the lands apart from the house.

COUNSEL: *O. Bertram* and *J. Vaughan*, for the appellant; *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *Hills*, for the respondent.

SOLICITORS: *Julius Bertram*; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Pennsylvania Shipping Co. *v.* Compagnie Nationale de Navigation.

Branson, J. 22nd, 24th, 25th, 26th June and 3rd July, 1936.

CONTRACT—CHARTER-PARTY—MISREPRESENTATIONS MADE BY SHIPOWNER DURING NEGOTIATIONS SUBSEQUENTLY EMBODIED IN CONTRACT—MISREPRESENTATIONS INDUCING CONTRACT—MISREPRESENTATIONS PART OF CONTRACT—RIGHTS OF RESCISSION.

Action for rescission of the charter of a ship.

In June, 1934, the plaintiffs' brokers signed a time-charter, chartering a tanker belonging to the defendants for twelve months. There was an option to cancel the charter if the ship were not ready by the 15th July, 1934. During the negotiations preceding the charter, the plaintiffs asked the defendants for certain particulars and measurements of the ship, which queries were duly answered, the statements made being embodied in the charter-party as guaranteed by the defendants in certain clauses of it. In June, the plaintiffs' marine superintendent examined the tanker and found that the particulars given in reply to the plaintiffs' queries did not accurately describe the vessel. The plaintiffs then instructed their brokers not to sign the charter-party, which instructions, however, reached their destination too late to prevent signature. The ship was then formally tendered by the defendants, but the plaintiffs refused her because she did not conform to the particulars furnished by the defendants with regard to her. The defendants having claimed that the question was one for arbitration, the plaintiffs brought this action, claiming that, if the charter-party was binding, they had been induced to enter into it by misrepresentations made during negotiations for the charter-party and subsequently incorporated in that contract, and that they were consequently entitled to rescission of the charter. *Cur. adv. vult.*

BRANSON, J., said that it had never been decided whether misrepresentations inducing a contract were a ground for setting it aside where they had become embodied in the contract and so formed part of its terms. It was pointed out in "Anson on Contracts," 17th ed., at p. 173 *et seq.*, that, at common law, if an innocent misrepresentation did not afterwards become part of the contract, its untruth was immaterial. In such a case equity might intervene to avoid or rescind the contract. Where, however, the misrepresentations became embodied in the contract, the courts of common law could deal with the matter, whether they were a condition entitling the injured party to repudiate, or a warranty giving rise only to an action for damages. The misrepresentation was, in those circumstances, merged in the higher contractual right, so that there was no need to resort to equity in order to rescind. The fusion of law and equity had not affected this result: see "Anson," p. 183. Here the plaintiffs could not obtain rescission on the ground of misrepresentations inducing the contract, as those misrepresentations had become embodied in the contract itself. It was, therefore, unnecessary to discuss whether, if they had not been so incorporated, they would have been sufficient to entitle the plaintiffs to rescind. They were bound to carry out the terms of the charter-party unless it contained conditions for the breach of which they were entitled to, and did, repudiate. In his opinion, the plaintiffs were entitled to repudiate because the defendants had in several material respects broken conditions contained in the charter-party. There must therefore be judgment in their favour.

COUNSEL: *Carpmael*, K.C., and *E. Addis*, for the plaintiffs; *Willink*, K.C., and *Cyril Miller*, for the defendants.

SOLICITORS: *Thomas Cooper & Co.*; *Middleton, Lewis and Clarke.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

W. H. Muller and Co.'s Algemeene Mijnbouw Maatschappij *v.* Ebbw Vale Steel, Iron and Coal Company, Limited.

Branson, J. 16th July, 1936.

PROCEDURE—SUBMISSION OF NO CASE TO ANSWER—UNDERTAKING BY DEFENDANT TO CALL NO FURTHER EVIDENCE—WHETHER JUDGE BOUND TO REQUIRE.

Action for alleged breach of contract.

Certain contracts were made in 1929 for the sale by the plaintiffs to the defendants of quantities of iron ore in monthly quantities. The plaintiffs pleaded that, after a small quantity of ore had been delivered, the defendants refused to accept any further deliveries, and they therefore claimed £44,214 13s. 6d., as the profit which they had lost. The defendants admitted the contracts but denied any breach, and relied on an exceptions clause contained in the contracts as precluding liability. That clause contained, *inter alia*, the following passage: "It is mutually agreed that in the event of unforeseen circumstances arising which might cause the closing down of the Ebbw Vale Works, all chartering to immediately cease on buyers giving written notice. Sellers to have the option of cancelling any undelivered balance." Evidence was called for the plaintiffs, whereupon it was submitted for the defendants that there was no case to answer. It was contended for the plaintiffs that, where a defendant submitted that there was no case to answer, he could not have judgment unless he undertook not to call any further evidence, and that that was the effect of the judgment of the Court of Appeal: *Alex* v. *Kerridge* (not reported on this point but reported on its facts in *The Times* of the 8th April, 1933).

BRANSON, J., said that he had been pressed to follow a decision of the Court of Appeal to the effect that a judge of first instance should not rule that there was no case to answer without requiring an undertaking from the defendant that he would not call any further evidence on any question of fact. With the greatest possible respect for anything that came from the Court of Appeal, he could not find anything in *Alex* v. *Kerridge*, *supra*, or in the recent case *Alexander* v. *Rayson* [1936] 1 K.B. 169, to support that proposition. He thought that the Court of Appeal were only ruling in the particular circumstances of a particular case and that, if they had intended to lay down a general rule, they would have used very different language. It seemed to him that it must be a matter for the trial judge to decide for himself. Whether he should put terms on the defendant, or whether he should rule unconditionally, should depend on whether, in his view, the imposing of the condition would save the litigants expense, time and trouble. It was not a general rule, but only a matter of convenience, and the judge must apply his mind to the interests of the parties. Here he would rule, leaving it to a superior tribunal to decide whether he was right or wrong, without requiring an undertaking from the defendants to refrain from calling further evidence. He held that the defendants had not at any time repudiated the contracts, and consequently the action must fail. The case as pleaded had not been proved by the evidence; there had been no breach by the defendants; and there must be judgment for them.

COUNSEL: *Willink*, K.C., and *Beecroft*, for the plaintiffs; *Miller*, K.C., and *Valentine Holmes*, for the defendants.

SOLICITORS: *C. J. Sharpe*; *Linklaters & Paines*, agents for *Colborne, Coulman & Lawrence*, Newport, Mon.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Hutchison and Others; *Ex parte* McMahon.

Swift, Humphreys and Goddard, J.J. 28th July, 1936.

CONTEMPT OF COURT — CINEMATOGRAPH FILM — MAN ARRESTED AND CHARGED—PUBLIC EXHIBITION OF FILM DEPICTING ARREST AND CONTAINING CAPTION LIKELY TO PREJUDICE TRIAL.

Order *nisi* for a writ of attachment for contempt of court.

On the 16th July, 1936, while H.M. the King was riding down Constitution Hill, an incident took place in connection with which mention was made of a revolver. Later the same day, the applicant McMahon, having been arrested, was, in connection with the incident, charged with being in possession of a firearm with intent to endanger life, contrary to s. 7 of the Firearms Act, 1920. He denied the charge. On the 18th July, a film said to have been made by a certain film distributing company was exhibited at a certain cinema belonging to a cinema company managed by Hutchison. That film showed, *inter alia*, a photograph of the applicant at the time of his arrest, preceded by a caption: "Attempt on the King's life." The effect was to allege that a revolver had been aimed at the King by a man but knocked out of the man's hand. On the 20th July, an undertaking was given on behalf of the distributing company immediately to communicate to every film exhibitor possessing a copy of the news-reel film in question instructions to delete the caption from it. On the 21st July, the film was again shown with the caption. On the 24th an order *nisi* was granted calling on the distributing company, the cinema company and Hutchison to show cause why writs of attachment should not be issued against them for contempt of court in exhibiting or causing to be exhibited a film containing matter calculated to prejudice the applicant's trial. At the hearing, it was stated on behalf of the cinema company that they had received no letter instructing them to delete the caption, and on behalf of the distributing company that the instructions had been sent to the cinema company together with all other exhibitors in possession of the film, and that the non-receipt by that company of the letter was unexplained. Sincere apologies and regret were expressed by all the respondents.

SWIFT, J., giving the judgment of the court, said that the order must be made absolute. All cinema proprietors and film distributors should observe that they were in no different position from anyone else, and that their conduct would be scrutinised by the court like that of any other individual in a case where contempt of court was alleged. A film was no more immune from the rules against that offence than a newspaper. The proprietors and producers of a film must take care that the language used for describing it was not such as would be likely to cause any derangement in the carriage of justice. The court took the view that Hutchison and the cinema company might be dealt with leniently. Their apology would be accepted, and they would only have to pay the costs of the application against them. The case against the distributing company was more serious. They had distributed the film to 262 other picture houses besides that of the cinema company. They had, however, withdrawn the caption as soon as their attention had been called to it, and had made a sincere apology. They would be fined £50, and pay the costs.

COUNSEL: *Beyfus*, K.C., and *H. C. Marks*, for the cinema company; *van den Berg*, K.C., and *H. Lightman*, for the distributing company, showing cause; *Hutchinson*, K.C., *John Maude* and *F. Milton*, in support.

SOLICITORS: *M. A. Jacobs & Sons* (for Hutchison and the companies); *Alfred Kerstein & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Rules and Orders.

THE SOLICITORS' PRACTICE RULES, 1936.

DATED 22ND JULY, 1936, MADE BY THE COUNCIL OF THE LAW SOCIETY UNDER SECTION 1 OF THE SOLICITORS ACT, 1933, AS APPROVED BY THE MASTER OF THE ROLLS.

RULE 1.

A solicitor shall not directly or indirectly apply for or seek instructions for professional business or do or permit in the carrying on of his practice any act or thing which can reasonably be regarded as touting or advertising or as calculated to attract business unfairly.

RULE 2.

(*a*) A solicitor shall not hold himself out or allow himself to be held out directly or indirectly and whether or not by name as being prepared to do professional business in contentious matters at less than the scale fixed by Rules of Court and in non-contentious matters at less than the scale of charges (if any) prevailing in the district in which the solicitor practises, or if no such scale exists then at less than two-thirds of the scale of charges fixed by the General Order made under the Solicitors' Remuneration Act, 1881, which came into force on the 1st January, 1883, and the General Orders amending that Order, or at less than the full scale prescribed by the Solicitors' Remuneration (Registered Land) Order, 1925, as amended by subsequent similar Orders: Provided always that if the charges in question shall be in respect of a transaction affecting an interest in land then the scale of charges prevailing in the district where the land is situated shall for the purposes of this rule be substituted for the scale of charges prevailing in the district in which the solicitor practises.

(*b*) In order to ascertain the scale of charges, if any, prevailing in any district, the Council may request the Law Society of such district, or, if there be no such Law Society, then any Law Society in the neighbourhood of such district to make inquiries and report by their Secretary as to the existence of any such scale. Such report shall constitute *prima facie* evidence as to the scale, if any, prevailing in such district.

RULE 3.

A solicitor shall not agree to share with any person not being a solicitor or other duly qualified legal Agent practising in the United Kingdom of Great Britain and Northern Ireland, India or in any British Dominion, Colony or Dependency his profit costs in respect of any business either contentious or non-contentious: Provided always that—

(*a*) A solicitor carrying on practice on his own account may agree to pay an annuity or other sum out of profits to a retired partner or predecessor or the dependents or legal personal representative of a deceased partner or predecessor.

(*b*) A solicitor who has agreed in consideration of a salary to do the legal work of an employer who is not a solicitor may agree with such employer to set off his profit costs received in respect of contentious business from the opponents of such employer or the costs paid to him as the solicitor for such employer by third parties in respect of non-contentious business, against (1) the salary so paid or payable to him and (2) the reasonable office expenses incurred by such employer in connection with such solicitor (and to the extent of such salary and expenses).

RULE 4.

(*a*) A solicitor shall not join or act in association with any organisation or person (not being a practising solicitor) whose business or any part of whose business is to make, support or prosecute (whether by action or otherwise and whether by a solicitor or agent or otherwise) claims arising as a result of death or personal injury including claims under the Workmen's Compensation Acts, 1925 to 1931, or any statutory modification or re-enactment thereof in such circumstances that such person or organisation solicits or receives any payment, gift or benefit in respect of such claims nor shall a solicitor act in respect of any such claim for any client introduced to him by such person or organisation.

(*b*) A solicitor shall not with regard to any such claim knowingly act for any client introduced or referred to him by any person or organisation whose connection with such client arises from solicitation in respect of the cause of any such claim.

(*c*) It shall be the duty of a solicitor to make reasonable inquiry before accepting instructions in respect of any such claim for the purpose of ascertaining whether the acceptance of such instructions will involve a contravention of the provisions of Sub-section (*a*) or (*b*) of this Rule.

RULE 5.

The Council of The Law Society shall have power to waive in writing any of the provisions of these Rules in any particular case or cases.

RULE 6.

In these Rules, unless the context otherwise requires, expressions shall have the meanings assigned to them by Section 81 of the Solicitors Act, 1932.

Words importing the masculine gender shall include females and words in the singular shall include the plural and words in the plural shall include the singular.

RULE 7.

These Rules may be cited as the Solicitors' Practice Rules 1936, and shall come into operation on the 1st day of October, 1936.

I approve the above Rules.

WRIGHT, M.R.

Legal Notes and News.

Honours and Appointments.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service: Mr. T. T. RUSSELL appointed Chief Police Magistrate, Fiji; Mr. H. G. MORGAN (Assistant Attorney-General) appointed Attorney-General, Nyasaland; Mr. L. A. W. ORR (Deputy Registrar) appointed Registrar of the High Court, Tanganyika; Mr. R. H. McLaughlin (Clerk of the Courts) appointed Resident Magistrate, Jamaica; Mr. A. D. PIXLEY (Clerk of the Courts) appointed Resident Magistrate, Jamaica.

Mr. LAWRENCE RIVERS DUNNE has been appointed a Metropolitan Police Magistrate to fill the vacancy caused by the resignation of Mr. R. Hopkin Morris. Mr. Dunne was called to the Bar by the Inner Temple in 1922.

Mr. STUART JONES, Deputy Town Clerk of High Wycombe, has been appointed Clerk and Solicitor to the Farnborough Urban District Council. Mr. Jones was admitted a solicitor in 1930.

Professional Announcements.

(2s. per line.)

Messrs. MARCH, PEARSON & GREEN, of 1, Dickinson Street West, Manchester, have admitted into partnership Mr. NIEL GUNN CROSFIELD PEARSON, B.A. (Oxon), the son of the senior partner.

THE LAND REGISTRY.

The Lord Chancellor on the recommendation of the Chief Land Registrar has approved the following promotions, with effect from 25th August, 1936:—

To be Registrar—

Mr. CECIL CHARLES DEANS vice Mr. S. Lowenthal, who retires on 24th August, 1936.

Note.—Mr. Lowenthal's service will be extended and he will act as a supernumerary Registrar for one year from 24th August, 1936, to assist in the extension of compulsory registration to Middlesex.

To be Assistant Registrars—

Mr. EUSTACE LIONEL FOLLETT, vice Mr. C. C. Deans, promoted. Mr. Follett was admitted a solicitor in 1913.

Mr. JAMES SAMUEL RICHARD DOKE RAWCLIFFE, vice Mr. G. W. H. Tupper, deceased. Mr. Rawcliffe was admitted a solicitor in 1910.

To be Legal Assistants—

Miss E. M. PRICE, vice Mr. E. L. Follett, promoted.

Mr. A. H. FLINT, vice Mr. J. S. R. D. Rawcliffe, promoted.

By Order of the Chief Land Registrar.

H.M. Land Registry.
5th August, 1936.

Mr. William Nembhard Hibbert, LL.D., Barrister-at-law, of the Middle Temple, lecturer and writer on law, left estate of the gross value of £16,436, with net personalty £14,726. He left to King's College, University of London, the law books in his chambers at 1, Garden-court, Temple, to be known as "the Hibbert Bequest."

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 24th September, 1936.

	Div. Months.	Middle Price 9 Sep. 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	115	3 9 7	2 19 10
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after	JD	107¼	3 5 3	2 18 5
Funding 4% Loan 1960-90	MN	118¾	3 7 4	2 18 1
Funding 3% Loan 1959-69	AO	102¼xd	2 18 8	2 17 4
Funding 2½% Loan 1956-61	AO	92⅞xd	2 13 11	2 18 2
Victory 4% Loan Av. life 23 years	MS	115	3 9 7	3 1 8
Conversion 5% Loan 1944-64	MN	119¾	4 3 6	1 18 11
Conversion 4½% Loan 1940-44	JJ	109¾	4 2 0	2 8 2
Conversion 3½% Loan 1961 or after	AO	107¼	3 5 3	3 1 7
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 10 6
Conversion 2½% Loan 1944-49	AO	101½	2 9 3	2 5 5
Local Loans 3% Stock 1912 or after	JAJO	97	3 1 10	—
Bank Stock	AO	382	3 2 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	88½	3 2 2	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96¾	3 2 0	—
India 4½% 1950-55	MN	117	3 16 11	3 0 0
India 3½% 1931 or after	JAJO	99¼	3 10 6	—
India 3% 1948 or after	JAJO	87¾	3 8 4	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	114½	3 9 10	2 14 10
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 5 8
*Australia (C'mm'nw'th) 3¼% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	112	3 11 5	3 1 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	98½	3 0 11	—
*Croydon 3% 1940-60	AO	99	3 0 7	3 1 2
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96½	3 2 2	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100¾	2 9 7	—
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3 1 10	3 2 1
Do. do. 3% "B" 1934-2003	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 5
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture	JJ	125	3 12 0	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131	3 16 4	—
Gt. Western Rly. 5% Preference	MA	120½	4 3 0	—
Southern Rly. 4% Debenture	JJ	114	3 10 2	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 6 8
Southern Rly. 5% Guaranteed	MA	131½	3 16 1	—
Southern Rly. 5% Preference	MA	120½	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

6

ain

tock
.

proxi-
Yield
ith
aption

s.	d.
9	10
—	
18	5
18	1
17	4
18	2
1	8
18	11
8	2
1	7
10	6
5	5
—	
—	
—	
—	
0	0
—	
—	
9	3
12	4
14	10
14	0
15	6
5	8
6	9
1	7
—	
0	0
4	4
6	2
18	0
—	
—	
1	2
19	8
—	
—	
—	
—	
—	
—	
3	2 1
3	1 5
2	18 5
2	17 10
3	1 6
—	
3	2 0
—	
—	
—	
—	
—	
—	
3	6 8
—	
—	

over 115.
calculated